

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
PUGET SOUND BY PRODUCTS

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 87-68

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a Notice and Order Civil Penalty of \$500 for causing or allowing the emission of an objectionable odor from appellant's property located at 2041 Marc Avenue, in Tacoma, Washington, on November 21, 1986, came on for hearing before the Pollution Control Hearings Board on September 3, 1987, in Seattle, Washington. Seated for and as the Board were Lawrence J. Faulk, (presiding), Wick Dufford, Chairman, and Judith A. Bendor. The proceedings were officially reported by court reporter Sandra Dirksen. Respondents elected a formal hearing pursuant to RCW 43.21B.230.

1 Appellant was represented by Attorney at Law, Randall L. St.  
2 Mary. Respondent Agency was represented by its attorney Keith D.  
3 McGoffin.

4 Witnesses were sworn and testified. Exhibits were examined.  
5 From the testimony heard and exhibits examined, the Board makes these

6 FINDINGS OF FACT

7 I

8 Appellant Puget Sound By Products, a division of Darling-Delaware  
9 Company, operates a commercial rendering plant located within the  
10 highly industrialized tide flats area of Tacoma.

11 II

12 Respondent Puget Sound Air Pollution Control Agency (PSAPCA) is a  
13 municipal corporation with the responsibility for conducting a program  
14 of air pollution prevention and control in a multi-county area which  
15 includes the site of the appellant's facility. PSAPCA, pursuant to  
16 RCW 43.21B.260 has filed with this Board a certified copy of its  
17 Regulation I (and all amendments thereto), which is noticed.

18 III

19 On the morning of November 21, 1986, PSAPCA received a complaint  
20 from a citizen who works as the executive vice president for a company  
21 located less than half a mile from appellants' facility. The  
22 complainant, while working in her office, was being affected by an  
23 odor she found repulsive and highly objectionable. She testified that  
24 the odor made her nauseous, and was particularly strong during the

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1 first hour or so of work: 8:00 to 9:00 a.m. She said that the smell  
2 was even more pronounced in her company's warehouse and that customers  
3 and other employees had complained to her.

4 Respondent Agency's inspector arrived at complainant's office that  
5 morning, at approximately 10:32 a.m., visited and spoke with the  
6 complainant and personally sniffed and verified a noticeable and  
7 distinct odor with unpleasant characteristics.

8 The inspector, during his visit, rated the odor as equivalent of a  
9 "2" on an odor rating scale ranging from 0 to 4, and delineated as  
10 follows:

11 0 - No detectable odor

12 1 - Odor barely detectable

13 2 - Odor distinct and definite, any unpleasant characteristics  
14 recognizable

15 3 - Odor strong enough to cause attempts at avoidance

16 4 - Odor overpowering, intolerable for any appreciable time.

17 This rating scale is used by PSAPCA not as regulatory standard, but as  
18 a shorthand method for preserving impressions for evidentiary purposes.

19 The inspector noted that the wind was blowing from the direction  
20 of appellant's facility to complainant's place of work. The  
21 complainant testified that the odor had abated somewhat by the time  
22 PSAPCA's inspector made his visit.

IV

After leaving complainant's office, the inspector proceeded to Appellant's facility and detected the same odor. The inspector contacted Mr. Bill Eckstein, plant manager, and advised that he had just verified an odor complaint. Mr. Eckstein stated they had received a number of barrels of mink bodies that morning. These barrels were dumped by hand requiring the receiving doors to be left half open. The inspector observed a semi-load of packing house waste awaiting dumping. Mr. Eckstein indicated they were currently cooking mink, fat and bones.

After leaving appellant's plant the inspector was called by radio and asked to return. When the inspector returned, Mr. Eckstein advised that he had discovered that the water pump on the stainless steel scrubber was not operating. He said the plant was being shut down to repair the scrubber pump.

V

Normally deliveries of animal wastes are hydraulically dumped from the delivery trucks into a hopper immediately adjacent to the plant's large receiving doors. The doors are usually open only briefly during this process. However, on the morning of November 21, 1986, the manual dumping of the open-topped barrels of mink bodies took longer than the usual procedure, requiring the doors to be kept open for 20 or 25 minutes.

1 VI

2 The scrubber which experienced a pump outage on November 21, 1986,  
3 is a part of Puget Sound By Product's odor control equipment. It is  
4 designed to reduce cooking odors from the rendering process.

5 After the pump shut-off was discovered, the company immediately  
6 set about to rectify the outage. The difficulty was traced to a  
7 circuit breaker which had tripped and the scrubber was back on the  
8 line with the pump running about 20 minutes after the shut down.  
9 Since then some lights have been added so that it is easier to observe  
10 a problem of this kind.

11 VII

12 On November 21, 1986, Notice of Violation (No. 20742) was issued  
13 to Puget Sound By Products for allegedly violating Section 9.11(a) of  
14 PSAPCA Regulation I and WAC 173-400-040(5) on November 21, 1986.

15 VIII

16 On March 18, 1987, Notice and Order of Civil Penalty No. 6640 was  
17 sent to appellant assessing a penalty of \$500 for the alleged  
18 violations on November 21, 1986. From this, appellant appealed to  
19 this Board on April 10, 1987.

20 IX

21 While the precise cause of the odor problem was not made clear,  
22 the Board finds on the record before it, that the odors complained of  
23 emanated from Appellant's facility and that they did, in fact,

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1 unreasonably interfere with the enjoyment of life, and property on the  
2 date involved here.

3 X

4 Puget Sound By Product has experienced some problems with odor  
5 control in the past, but presently possesses advanced control  
6 equipment. Three civil penalties have been issued by the agency to  
7 this source. One fine was vacated and one fine was affirmed by this  
8 Board, while one was paid by the company. The company has incurred no  
9 penalty liability for seven years.

10 XI

11 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
12 adopted as such.

13 From these Findings of Fact, the Board comes to these

14 CONCLUSIONS OF LAW

15 I

16 The Board has jurisdiction over these persons and these matters  
17 Chapters 43.21 and 70.94 RCW.

18 II

19 Under terms of Section 9.11 (a) of PSAPCA Regulation, certain air  
20 emissions are prohibited. This section reads as follows:

21 (a) It shall be unlawful for any  
22 person to cause or permit the emission of a  
23 contaminant in sufficient quantities, and of  
24 such characteristics and duration as is, or is  
25 likely to be, injurious to human health, plant  
or animal life, or property, or which  
unreasonably interferes with the enjoyment of  
life and property.

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1 WAC 173-400-040(5) is substantially to the same effect. This  
2 formulation parallels the definition of "air pollution" contained in  
3 the State Clean Air Act at RCW 70.94.030(2). The language is similar  
4 to the traditional definition of nuisance. See RCW 7.48.010.

5 III

6 On November 21, 1986, odors emanating from appellant's plant  
7 wafted onto nearby property and had such effects on the enjoyment of  
8 life and property as to violate Section 9.11(a) of Respondent's  
9 Regulation I, and WAC 173-400-040(5).

10 IV

11 Although Puget Sound By Products operates a facility which usually  
12 controls odors effectively, the Washington Clean Air Act, and the  
13 regulations implementing it, set forth a strict liability standard.  
14 By setting forth such a standard, the legislature has determined that  
15 neighbors should not bear the burden of the offensive odors.

16 Here the penalty imposed is only one-half the ordinary maximum and  
17 one-tenth the limit provided for aggravated cases. Under all the  
18 facts and circumstances, we do not believe the penalty assessed here  
19 was unreasonable.

20 V

21 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
22 adopted as such.

23 From these Conclusions of Law the Board enters this  
24

25  
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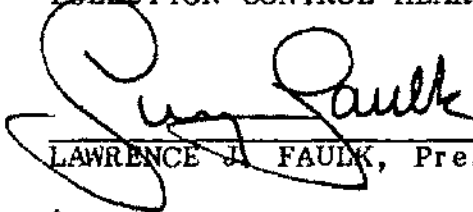
(7)


ORDER

Notice and Order of Civil Penalty Number 6640 issued by PSAPCA is affirmed.

DONE this 22nd day of September, 1987.

POLLUTION CONTROL HEARINGS BOARD

 9/22/87  
LAWRENCE J. FAULK, Presiding

  
WICK DUFFORD, Chairman

  
JUDITH A. BENDOR, Member

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